

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GENERAL CONVENTION OF THE
NEW JERUSALEM IN THE UNITED
STATES OF AMERICA, INC., THE
MASSACHUSETTS ASSOCIATION OF
THE NEW JERUSALEM
(SWEDENBORGIAN), and GEORGE
CHAPIN,

Plaintiffs,

v.

C.A. No. 04-10419-WGY

EDWARD MACKENZIE, THOMAS
KENNEDY, BOSTON SOCIETY OF THE
NEW JERUSALEM, INCORPORATED
(SWEDENBORGIAN), and BOSTONVIEW
CORPORATION

Defendants.

**DEFENDANTS BOSTON SOCIETY OF THE NEW JERUSALEM, INC.
AND BOSTONVIEW CORPORATION'S MOTION TO DISMISS**

Defendants Boston Society of the New Jerusalem, Incorporated (“the Church”) and Bostonview Corporation (“Bostonview”), by their attorneys and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), move this Court to dismiss all claims asserted against them by the Plaintiffs for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The only claims that the Plaintiffs have asserted against the Church and Bostonview are declaratory judgment claims under state law, which request that the Court declare the rights of the parties with respect to the disposition of Church property and the propriety of the Church’s admission of certain members. The Plaintiffs lack standing to assert these claims, as Massachusetts has implemented a comprehensive regulatory scheme by which the Massachusetts Attorney General has the exclusive authority to oversee and enforce the rights

and obligations of public charities such as the Church. In fact, the Attorney General has already commenced an action covering the very same claims as the present Complaint, and that action remains pending in the Superior Court for Suffolk County. Furthermore, the relief that the Plaintiffs seek is premised upon the dissolution of the Church – an event that indisputably has not happened. Finally, the requested relief would require this Court impermissibly to entangle itself with matters of religious faith and doctrine. Such entanglement is prohibited by the First Amendment to the United States Constitution, as well as by the Massachusetts Declaration of Rights.

Alternatively, if the Court determines that it has subject matter jurisdiction over these claims, the Church and Bostonview request that the Court abstain from exercising that jurisdiction pursuant to federal abstention doctrines and 28 U.S.C. § 1367. The pendency of the state court action, the existence of a comprehensive regulatory scheme under the direction of the Attorney General, and the predominance of complex state law issues over the issues presented in the sole federal claim – an alleged RICO violation against defendants other than the Church and Bostonview – all demonstrate the need for this Court to abstain from hearing the claims against the Church and Bostonview.

In further support of their motion, the Church and Bostonview adopt and incorporate by reference their Memorandum of Law in Support of Motion to Dismiss, as well as the Motion to Dismiss and Memorandum submitted by Defendants Edward MacKenzie and Thomas Kennedy.

WHEREFORE, Defendants Boston Society of the New Jerusalem, Incorporated and Bostonview Corporation respectfully move that the Court dismiss Counts IV and V of the Complaint, which are the only counts seeking relief against these defendants.

BOSTON SOCIETY OF THE NEW
JERUSALEM, INC. and BOSTONVIEW
CORORATION,
Defendants

By their attorneys,

/s/ Brian H. Lamkin
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Brian H. Lamkin (BBO# 635688)
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REQUEST FOR ORAL ARGUMENT

The Defendants request an opportunity for oral argument on this Motion.

/s/ Brian H. Lamkin
Brian H. Lamkin (BBO# 635688)

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on March 18, 2004, Richard J. McCarthy, counsel for the Church and Bostonview, advised counsel for the Plaintiffs that the Church and Bostonview intended to file a motion to dismiss.

/s/ Brian H. Lamkin
Brian H. Lamkin (BBO# 635688)